

The Cardoza Law Corporation

Michael F. Cardoza, Esq. (SBN: 194065)

Mike.Cardoza@cardozalawcorp.com

Lauren B. Veggian, Esq. (SBN: 309929)

Lauren.Veggian@cardozalawcorp.com

548 Market St. #80594

San Francisco, CA 94104

Telephone: (415) 488-8041

Facsimile: (415) 651-9700

Attorneys for Plaintiff,

Silverio Almanza

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

SILVERIO ALMANZA,

Plaintiff,

v.

AFNI, INC.,

Defendant.

Case No.: 5:21-cv-03277

COMPLAINT FOR DAMAGES

- 1.) FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 ET SEQ.**
- 2.) ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CALIFORNIA CIVIL CODE § 1788 ET SEQ.**

DEMAND FOR JURY TRIAL

///

///

///

///

INTRODUCTION

1. This is a case about a collection company who attempted to collect an amount after the consumer disputed the debt in writing, refused to pay it in writing, and requested in writing that the collection company cease all communications.
2. **SILVERIO ALMANZA** (“Plaintiff”), by Plaintiff’s attorney, brings this action for actual damages, statutory damages, punitive damages, injunctive relief, restitution, attorneys fees, and costs, against **AFNI, INC.** for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter “FDCPA”), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter “RFDCPA”), both of which prohibit debt collectors from engaging in abusive, deceptive and unfair practices.
3. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to the Plaintiff, or to the Plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
4. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.
5. All violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violations.
6. Unless otherwise indicated, the use of a Defendant’s name in this Complaint includes all agents, principles, managing agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that Defendant named.

JURISDICTION AND VENUE

7. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the

1 laws of the United States, and pursuant to 28 U.S.C. § 1367 for pendent state law
2 claims.

3 8. This action arises out of Defendant's violations Fair Debt Collection Practices
4 Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), and the Rosenthal Fair Debt
5 Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter
6 "RFDCPA").

7 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the acts and
8 transactions occurred here, Plaintiff resides here, and Defendant transacts
9 business here.

10 FDCPA AND RFDCPA

11 10. In enacting the FDCPA, Congress found that:

- 12 a. There is abundant evidence of the use of abusive, deceptive, and unfair debt
13 collection practices by many debt collectors. Abusive debt collection
14 practices contribute to the number of personal bankruptcies, to marital
15 instability, to the loss of jobs, and to invasions of individual privacy.
- 16 b. Existing laws and procedures for redressing these injuries are inadequate to
17 protect consumers.
- 18 c. Means other than misrepresentation or other abusive debt collection
19 practices are available for the effective collection of debts.
- 20 d. Abusive debt collection practices are carried on to a substantial extent in
21 interstate commerce and through means and instrumentalities of such
22 commerce. Even where abusive debt collection practices are purely intrastate
23 in character, they nevertheless directly affect interstate commerce.
- 24 e. It is the purpose of this title to eliminate abusive debt collection practice by
25 debt collectors, to ensure that those debt collectors who refrain from using
26 abusive debt collection practices are not competitively disadvantaged, and to
27 promote consistent State action to protect Consumers against debt collection
28 abuses. 15 U.S.C. § 1692.

11. Similarly, when enacting the RFDCPA, the California Legislature found that:

The banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts. Unfair or deceptive collection practices undermine the public confidence which is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. Cal. Civil Code § 1788.1(a)(1).

12. The FDCPA and the RFDCPA are both strict liability statutes. That is, a plaintiff need not prove intent or knowledge on the part of the debt collector to establish liability. *See Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060-61 (9th Cir. 2011); *Donohue v. Quick Collect*, 592 F.3d 1027, 1030 (“[t]he FDCPA is a strict liability statute that makes debt collectors liable for violations that are not knowing or intentional”).

13. To further protect consumers, claims under the FDCPA and RFDCPA are to be judged according to the “least sophisticated debtor” or “least sophisticated consumer” standard. *Gonzales* at 1061. This standard is lower than the “reasonable debtor” standard and is specifically designed to protect consumers of below average and sophistication or intelligence. *Id.* In addition, a plaintiff need not even have actually been misled or deceived by the debt collector’s communication. Rather, liability depends on whether the *hypothetical* least sophisticated debtor – someone who is uninformed and naïve – would have likely been misled. *Id.*; *see also Tourgeman v. Collins Financial Servs.*, 755 F.3d 1109, 1119 (9th Cir. 2014).

INTRADISTRICT ASSIGNMENT

14. Intradistrict assignment to the SAN JOSE DIVISION is proper because this case’s category is not excepted by Civil L.R. 3-2(c) and a substantial part of the events or omissions which give rise to the claim occurred in the county of MONTEREY.

///

PARTIES

15. Plaintiff is a natural person who resides in the County of Monterey, State of California. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a (3) and “Debtor” as that term is defined by California Civil Code § 1788.2(h).

16. Defendant AFNI, Inc. (hereinafter “Defendant AFNI”) is an Illinois corporation operating from an address of 404 Brock Dr., Bloomington, IL 61701, and is a “Debt Collector” as that term is defined by 15 U.S.C. § 1692a (6) and Cal. Civ. Code § 1788.2(c) because it regularly uses the mails and/or the telephone to collect, or attempt to collect, directly or indirectly, defaulted consumer debts that it did not originate. It operates a nationwide debt collection business and attempts to collect debts from consumers in virtually every state, including consumers in the State of California. Its principal, if not sole, business purpose is the collection of defaulted consumer debts originated by others, and, in fact was acting as a debt collector as to the delinquent consumer debt it attempted to collect from Plaintiff. Defendant AFNI is a bad debt buyer that buys large portfolios of defaulted consumer debts for pennies on the dollar, which it then collects upon through other collection agencies.

17. This case involves money due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a “consumer debt” and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

18. Plaintiff is an individual residing in the County of Monterey in the State of California.

19. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendant conducted and continues to conduct business in the State of California.

///

20. Defendant's business consists solely of the acquisition and collection of delinquent consumer debts.

21. In December 2020, Plaintiff received communication from Defendant dated December 12, 2020, demanding payment in the amount of \$655.52 for a Sprint account.

22. Plaintiff sent a letter via USPS Certified Mail dated December 24, 2020 to Defendant, stating that Plaintiff refused to pay the debt and to cease all communications from Defendant.

23. On January 8, 2021 Plaintiff received confirmation from USPS that his letter had been delivered to Defendant.

24. In February 2021 Plaintiff received a letter from Defendant dated February 1, 2021, again demanding payment in the amount of \$655.52 for the Sprint account.

25. In February 2021 Plaintiff received a letter from Defendant dated February 12, 2021, again demanding payment in the amount of \$655.52 for the Sprint account.

ACTUAL DAMAGES

26. Plaintiff has suffered actual damages as a result of these illegal collection and intimidation tactics by this Defendant in the form of, pecuniary loss, invasion of privacy, personal embarrassment, loss of personal reputation, loss of productive time, nausea, and feelings of fear, anxiety, hopelessness, anger, persecution, emotional distress, frustration, upset, humiliation, and embarrassment, amongst other negative emotions.

CAUSES OF ACTION CLAIMED BY PLAINTIFF

COUNT I

VIOLATION OF § 1692C OF THE FDCPA

27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

28. Defendant violated §1692c of the FDCPA when it, communicated with Plaintiff with respect to the Sprint debt at issue in this case after Plaintiff notified

1 Defendant in writing, via USPS Certified Mail, that he refused to pay the Sprint
2 debt, and that he wished Defendant would stop communicating with him.

- 3 a. The violative communications by Defendant were not to advise Plaintiff
4 that further collection efforts were being terminated, were not to notify
5 Plaintiff that Defendants may invoke specified remedies which are
6 ordinarily invoked by Defendants and were not to notify Plaintiff that
7 Defendants intended to invoke a specific remedy.

8 **COUNT III**

9 **VIOLATION OF § 1788.17 OF THE RFDCPA**

10 29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint
11 as though fully stated herein.

12 30. A defendant violates § 1788.17 of the RFDCPA when it fails to comply with
13 the provisions of 15 U.S.C. § 1692b to 1692j, inclusive.

14 Defendants violated § 1788.17 of the RFDCPA when they willfully engaged in
15 conduct, the natural consequence of which the violation of 15 U.S.C. § 1692c.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- 18 a) Award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) (FDCPA)
19 and pursuant to Cal. Civ. Code § 1788.30 (RFDCPA), against Defendant
20 and for Plaintiff, and,
21 b) Award of statutory damages in the amount of \$1000.00 pursuant to 15
22 U.S.C. § 1692k(a)(1) (FDCPA) against Defendant and for Plaintiff, and,
23 c) Award of statutory damages in the amount of \$1000.00 pursuant to Cal.
24 Civ. Code § 1788.30 (RFDCPA) against Defendant and for Plaintiff, and,
25 d) Award of costs of litigation and reasonable attorney's fees pursuant to 15
26 U.S.C. § 1692k(a)(1) (FDCPA) and pursuant to Cal. Civ. Code § 1788.30
27 (RFDCPA), against Defendant and for Plaintiff, and,

28 ///

1 e) Award to Plaintiff of such other and further relief as may be just and
2 proper.

3 **CERTIFICATION OF INTERESTED PARTIES**

4 Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other
5 than the named parties, there is no such interest to report.

6 BY: /s/ LAUREN B. VEGGIAN

7 LAUREN B. VEGGIAN, ESQ.

8
9 **TRIAL BY JURY IS DEMANDED.**

10 31. Pursuant to the seventh amendment to the Constitution of the United States of
11 America, Plaintiff is entitled to, and demands, a trial by jury.

12
13 **THE CARDOZA LAW CORPORATION**

14 DATED: May 03, 2021

15 BY: /s/ LAUREN B. VEGGIAN

16 LAUREN B. VEGGIAN, ESQ.

17 MICHAEL F. CARDOZA, ESQ.

18 ATTORNEYS FOR PLAINTIFF,

19 SILVERIO ALMANZA
20
21
22
23
24
25
26
27
28